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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,381	10/14/2004	Steven M. Kessell	205332-9011-01	2105
1131 7590 10/11/2007 MICHAEL BEST & FRIEDRICH LLP Two Prudential Plaza 180 North Stetson Avenue, Suite 2000 CHICAGO, IL 60601			EXAMINER QUINN, COLLEEN M	
			ART UNIT 3634	PAPER NUMBER
			MAIL DATE 10/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/511,381

Applicant(s)

KESSELL ET AL.

Examiner

Colleen M. Quinn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 20-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 20-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

Claim Objections

Claims 33 and 40 are objected to because of the following informalities: it appears the applicant intends to claim the --first-- shelf extending forwardly from the support posts, rather than the "front shelf" as currently recited in the claims. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8, 37 and 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, it is unclear as to whether or not the "second shelf" is actually being since the claim only recites that the posts be "adapted for releasable attachment to a second shelf". It also unclear as if the second shelf is an alternative shelf to the first or if it is just located on another side of the posts since it is unclear as to how two shelf would hang at the same elevation. Appropriate clarification is required.

Regarding claims 37 and 44, each claim recites that the first shelf extends rearwardly from the support posts, which directly contradicts their respective independent claims, claims 33 and 40, which recite that the first shelf extends forwardly from the support posts. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by Ostertag et al. (US 6,267,064). Ostertag et al. disclose a post (31) for supporting cantilevered shelves in a shelving assembly (figure 1) having a front and a rear, the post comprising a periphery having a front surface substantially facing the front of the shelving assembly; a rear surface opposite the front surface; a first side adjacent to the front surface; and a second side adjacent the front surface and opposite the first side and connectors (nuts) extending outwardly from the first and second sides of the support posts and welded to the first and second sides of the support posts (col. 7, lines 26-28).

Claims 40-43, 45, 47 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Ostertag et al. (US 6,267,064). Ostertag et al. disclose a modular shelving system comprising a support post (31) having a front, a rear, and opposing first and second sides (figure 1); a plurality of connectors extending laterally and away from the support posts (unnumbered nuts; col. 7, lines 26-28) on the first and second sides of the support post; first and second shelves (36) extending away from the posts and releasably attached (col. 6, lines 43-47) to the support posts solely at their rear ends (figure 1), the first and second shelves extending forwardly and rearwardly, respectively, of the support post, wherein the first and second shelves are adjacent one another and

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releasably attached to the support post at the same height (figure 9) and a portion of the shelves is disposed in at least a portion of the width of the front of the post and extends around a corner (figure 9).

Claim 55 is rejected under 35 U.S.C. 102(b) as being anticipated by Stroh (US 3,730,108). Stroh discloses a method for supporting a cantilevered shelf by providing a first post (12a) and a second post (12b) each having a width measured in a lateral direction of the first and second posts, the first post laterally spaced from the second post (figure 1), selecting a height of a shelf upon the first and second posts; connecting a first portion of the shelf with an exterior surface on a side of the first post; connecting a second portion of the shelf with an exterior surface on a side of the second post; cantilevering the shelf from the first and second posts in one of a forward and rearward direction with respect to the first and second posts and abutting the shelves against less than an entire front the widths of the first and second posts.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 6, 9-17, 22-36, 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tayar (US 5,695,163) in view of Lazarus (US 5,655,740).

Regarding claims 1-3, 5 and 6, Tayar discloses a modular shelving system (10) comprising first and second support posts (12) laterally spaced from one another (col 2, lines 43-46); the first support post having a first plurality of connectors (46) extending laterally and away from an exterior of the first support post; the second support post having a second plurality of connectors (46) extending laterally and away from an exterior of the second support post; and a first cantilevered shelf (14,16) releasably attached at an elevation to at least one of the first plurality of connectors at a location exterior to the first support post and at least one of the second plurality of connectors at a location exterior to the second support post such that the first shelf is cantilevered from the first and second support posts at only one end of the first shelf (figure 1), the first shelf adjustable to different heights along the first and second support posts by releasable attachment to connector locations (40a, 40b, etc.) the first cantilevered shelf comprising first and second side brackets (14); at least one cross member (16) extending between the first side bracket and the second side bracket defining a support surface, wherein the first and second side brackets further comprises flanges (42a, 42b) having a first end releasably attached to and cantilevered from at least on the connectors (figure 1), a portion (30) extending across and bearing against at least a part of the front width of the first and second posts, and wherein the connectors are a plurality of pins extending though a plurality of apertures defined in the first and second support posts. Though Tayar is capable of supporting additional shelves on additional connectors, Tayar does not disclose a second shelf at the same height as the first shelf or extending in an opposite direction.

However, Lazarus teaches a modular shelving system (10) wherein at least one supporting post (50) is adapted for releasable attachment of a second shelf at the same height as the first shelf (figure 3b) and additional shelving at either the same height or an alternate height, but extending in a rearward direction (figure 7), providing an extended supporting surface.

Therefore, it would have been obvious to one of ordinary skill in the art to provide the shelving system of Tayar with the shelving arrangements taught by Lazarus in order to provide an extended shelving support surface.

Regarding the method claims, although neither Tayar nor Lazarus disclose specific methods for mounting the shelves to the posts, it would be obvious to one of ordinary skill in the art to mount the shelves, having the features disclosed above, and in the arrangement, as disclosed above, by attaching the shelving brackets and cross members at desired heights selected from the plurality of connector locations and cantilevering the brackets from the connectors and arranging the a plurality of shelves at the same height.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tayar in view of Lazarus as applied to claims 1-3, 5, 6, 9-17, 22-36, 38 and 39 above, and further in view of Towfigh (US 5,531,168). Neither Tayar nor Lazarus discloses a base disposed between the first and second support posts.

However, Towfigh teaches a multi-directional modular shelving assembly (figure 1) comprising a base (15) having a first end attached to the first and second support

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posts and a second end having at least one leg (32), supporting the first and second support post, providing a ground support for the first and second support posts.

Therefore, it would have been obvious to one of ordinary skill in the art to provide the support posts of Tayar with a base, as taught by Towfigh, in order to provide a ground support for the shelving unit, as an alternative to wall mounting.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tayar in view of Lazarus as applied to claims 1-3, 5, 6, 9-17, 22-36, 38 and 39 above, and further in view of Ostertag et al. (US 6,267,064). Neither Tayar nor Lazarus disclose the connectors to be welded to the posts.

However, Ostertag et al. teach a modular shelving system in which connector pieces (nuts) are welded to the support posts (col. 7, lines 26-28) providing a secure connection between the outwardly extending connecting pieces and the support posts.

Therefore, it would have been obvious, to one of ordinary skill in the art, to weld the connectors of Tayar to the support posts, as taught by Ostertag et al. in order to provide a secure connection between the connectors and support posts.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tayar in view of Lazarus as applied to claims 1-3, 5, 6, 9-17, 22-36, 38 and 39 above, and further in view of Wood (US, 5,921,190). Neither Tayar nor Lazarus disclose a cover attached to the shelf, defining a supporting surface.

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However, Wood teaches a modular shelving assembly comprising a shelf wherein the shelf includes both a cross member (54) and a cover (56), providing a supporting surface for items.

Therefore, it would have been obvious to provide the shelving system of Tayar with both a cross member and a cover, as taught by Wood, in order to provide alternative supporting surfaces.

Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ostertag et al. as applied to claim 18 above, and further in view of Lazarus (US 6,655,740). Ostertag et al. fail to disclose the connectors to be pins that extend through the first and second sides of the support posts through holes in the first and second sides of the support pots.

However, Lazarus teaches a modular shelving system including shelves attached to support posts (50) via connector pins (35) that extend through apertures on the first and second sides of the first and second support posts (figures 5a-5c), providing an assembly with fewer parts.

Therefore, it would have been obvious to one of ordinary skill in the art to provide the shelving assembly of Ostertag et al. with single piece connector pins, as taught by Lazarus, in order to provide an assembly with fewer parts.

Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ostertag et al. as applied to claims 40-43, 45, 47 and 48 above, and further in view of Lazarus

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(US 5,655,740). Ostertag et al. fail to disclose the connectors to be pins that extend through the first and second sides of the support posts through holes in the first and second sides of the support pots.

However, Lazarus teaches a modular shelving system including shelves attached to support posts (50) via connector pins (35) that extend through apertures on the first and second sides of the first and second support posts (figures 5a-5c), providing an assembly with fewer parts.

Therefore, it would have been obvious to one of ordinary skill in the art to provide the shelving assembly of Ostertag et al. with single piece connector pins, as taught by Lazarus, in order to provide an assembly with fewer parts.

Claim 56 rejected under 35 U.S.C. 103(a) as being unpatentable over Stroh as applied to claim 55 above, and further in view of Tayar. Stroh fails to disclose the connection between the sides of the posts and the shelves to be outwardly extending pins.

However, Tayar teaches a shelving system wherein the support posts (12) have outwardly extending pins (46) for receiving a portion of the shelf (14), providing a secure connection between the shelf and support posts.

Therefore, it would have been obvious to one of ordinary skill in the art, to provide outwardly extending pins on the sides of the support posts of Stroh, as taught by Tayar, in order to provide a more secure connection between the shelf and posts.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Resetar (US 4,397,432) teaches key features of the applicant's claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Colleen M. Quinn whose telephone number is (571) 272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571) 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CMQ
10/5/07

A handwritten signature in black ink, appearing to read "Brian E. Glessner", with a long horizontal flourish extending to the right.

BRIAN E. GLESSNER
SUPERVISORY PATENT EXAMINER